

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

B.R.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2013030752

DECISION

This matter was heard by Mark Harman, Administrative Law Judge with the Office of Administrative Hearings, on June 12, 2013, in Alhambra, California.

Jesse Valdez, Manager of Federal Programs/Residential Services, represented the Eastern Los Angeles Regional Center (Service Agency). B.R. (Claimant) was present at the hearing and represented herself, with the assistance of her aunt, R.D.R.¹ B.R. and her family were provided translation services by a Spanish-language translator during the hearing.

Oral and documentary evidence was received. The record was left open until June 28, 2013, to receive a videodisc document from Respondent and for the Service Agency to file an objection. The videodisc was received and marked for identification as Exhibit B. The Service Agency did not object and Exhibit B was admitted. The matter was deemed submitted for decision on June 28, 2013.

ISSUE

Should the Service Agency be required to fund modifications of a family-owned vehicle so that it will be accessible for Claimant?

¹ Initials or family titles are used to identify Claimant and her family to preserve Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a 40 year old consumer who enjoys living independently. She resides in a one-bedroom apartment in a senior living community, with assistance from her mother, other family members, and friends. She has cerebral palsy, she is non-ambulatory, and she has mild mental retardation. Claimant requires physical assistance to transfer to and from her wheelchair, and for performing her hygiene, dressing, and toileting tasks. The Service Agency currently is funding 45 hours per month of supported living services (SLS) provided by Passport to Learning, Inc. Claimant receives approximately 200 hours per month of In-Home Supportive Services (IHSS). Claimant's mother is her IHSS worker.

2. Claimant relates experiences with details. She describes and expresses her feelings. She is affectionate with her family. She is social and enjoys talking and joking around. She babysits her nephews once a week. She is reported to have good relationships with her neighbors in the senior community. Her family is very supportive and has been the primary provider of transportation to medical consultations, social activities, and other needs.

3. Between approximately 1999 and 2011, Claimant's family owned a used van that was wheelchair accessible, which they had purchased from ACCESS.² Mother drove the van. The van was the exclusive means to transport Claimant in the community. The last time the van broke down, after 12 years of use, the family decided to put the van on the market because it was not efficient or economical to pay \$1,300 to repair the van's engine. Since that time, Claimant's aunt, who lives approximately 65 miles away in Victorville, has been transporting Claimant in her 2007 Honda Odyssey minivan, which is not modified to allow easy access for a wheelchair. Claimant's mother's vehicle is too small to accommodate Claimant's electric wheelchair. The family has borrowed a manual hoist/lift device that it uses to transfer Claimant into and out of the minivan. They family must push and pull to move the wheelchair up a ramp into the rear of the van.

4. The loss of the wheelchair-accessible van affected Claimant's participation in a number of activities for her physical and emotional well-being. Claimant has diabetes, high cholesterol, gastritis, obesity, and constipation. Mother regularly transported Claimant to Rancho Los Amigos (RLA) for her medical needs, including three times per week for therapeutic exercise and general strength sessions. The trip now takes two hours each way by bus, so the number of sessions she attends has significantly diminished. She still goes for regular consultations with the physicians at RLA every three months. Her mother also would drive her to the Bellflower Weight Watchers meetings, where Claimant could be weighed in her wheelchair, but she does not go there now because the trip takes four or five buses.

5. Claimant has taken the bus to attend her training in computers and graphic design on Fridays, but it takes as long as 50 minutes each way. On several occasions, bus drivers have passed by and failed to stop to pick her up. Some drivers tell her that the lift equipment is not operating. Claimant testified that, since busses have only two spots for wheelchairs, she may have to wait until another bus comes, which has caused her to miss

² ACCESS Paratransit is a generic agency that provides curb to curb transportation for disabled persons in Los Angeles County.

medical appointments. On one occasion, a bus broke down and it took a long while to get fixed. Claimant had an embarrassing toileting accident while she waited. She also has been scared when other bus riders engaged in physical altercations. Taking a bus is particularly difficult when it rains, and nighttime bus service is even more complicated and less reliable.

6. Claimant does not trust ACCESS to meet her transportation needs based on her experiences and difficulties with this service. On more than one occasion, ACCESS has failed to pick her up at the scheduled time. She has missed medical appointments because she was the last customer to be dropped off. She also was left at a location for several hours with no means of returning home. Claimant concedes that she did not file any complaints regarding these services, but she chooses not to use ACCESS because she believes their scheduling and transport guidelines are inconsistent.

7. Claimant spends approximately one week per month visiting her aunt's home in Victorville. She utilizes that week for stress relief and to get a break from her various doctors' appointments and her daily routine. She has a long history of depression, which previously was diagnosed as Dysthymic Disorder. Claimant takes medication for depression and anxiety. She readily admits that she has had thoughts about wishing to die, but reports that she has not had any actual thoughts about injuring herself. She struggles with periods of sadness, crying, and depression. Claimant goes to a counseling session each week.

8. In 2012, the family found the physical requirements of transporting Claimant in the minivan increasingly difficult. Claimant asked the Service Agency to fund modifications to the minivan that would make it wheelchair accessible. Under Claimant's proposal, Claimant's aunt offered to dedicate the minivan for Claimant's use. Her mother would be the driver. Claimant provided other information to the Service Agency, including three quotes from three different vendors regarding the modification's cost. The cost, approximately \$23,000, was more than Claimant's family could afford.

9. Although Claimant's request purportedly was being considered during the annual individual program plan (IPP) meeting in December 2012, it is clear the Service Coordinator already had concluded that all of Claimant's transportation needs were being met at that time. On March 1, 2013, the Service Agency served a notice of proposed action (NOPA), informing Claimant that it was "not in agreement to fund for a vehicle modification for your wheelchair. . . . [¶] . . . You currently have various resources available to meet your transportation needs. You indicate use of public transportation as well as ACCESS transportation services on a regular basis. Additionally your family provides some assistance with transportation via their personal vehicles." The NOPA cited Welfare and Institutions Code³ sections 4512, subdivision (b), 4646, subdivisions (a) and (d), 4646.4, subdivision (a) [which requires, among other things, that the Service Agency ensure the "[u]tilization of generic services and supports when appropriate" during the development and implementation of the consumer's IPP], 4648, subdivisions (a)(2) and (a)(8), 4648.35, subdivision (b) [which requires the Service Agency to fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP], and 4659, subdivisions (a)(1),

³ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

(a)(2), and (c). Thus, the Service Agency asserted that nothing more need be done, since all of Claimant's "essential" transportation needs were being met through generic resources and natural supports. Claimant requested a fair hearing.

10. The Service Coordinator was still gathering information regarding Claimant's request after the IPP meeting and the issuance of a NOPA; the Service Coordinator submitted the information to the Service Agency's occupational therapist for review. The Service Coordinator acquired some misinformation, as well. For example, it was not true that all of Claimant's transportation needs were being met at that time by public transportation, ACCESS, or family assistance, or that Claimant primarily used the bus to get to medical consultations, or that the family had not yet purchased a vehicle that could meet Claimant's needs. The 2012 IPP states that Claimant "utilizes an electric wheel chair on a daily basis to navigate her home and community." This statement is not wholly consistent with the SLS provider's report, which states that Claimant's community safety and awareness skills were only "fair-good," and that she needed to be more aware of the dangers when crossing streets and to pay closer attention to cars that were exiting driveways. Her SLS caregiver wrote that Claimant had learned about community resources and how to plan trips in the community, "but is showing little to no progress when it comes to wheeling herself around." (Exhibit 7.)

11. The various misstatements were reiterated in the April 19, 2013 report of Angela Espinoza Puopolo OTR/L, SWC, CLC (Puopolo). It appears that Puopolo did not perform an independent examination of Claimant's circumstances or needs. In the report, Puopolo concluded that "[Claimant] has family who has the ability and access to vehicles to help transport [Claimant] when she does not want to take the bus. She has not been hindered in her ability to access her family in Victorville." (Exhibit 3.) Puopolo offered no explanation for this conclusion. Her report did not indicate she had considered the fact that Claimant will be unable to take monthly sojourns to her aunt's home in Victorville after her aunt decides that she no longer is able or willing to transport Claimant in her unmodified minivan. The cost-effectiveness of the modifications also is not discussed.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal, as set forth in factual finding numbers 1-11, and legal conclusion numbers 2-8.

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq., to provide a pattern of services and supports sufficiently complete to meet the needs of each person with a qualifying developmental disability, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-

4716.) Claimant submitted a fair hearing request to appeal the Service Agency's proposed denial of her services request. Jurisdiction in this case was thus established.

3. Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) Services and supports can include the adaptation of vehicles to facilitate transportation in the community. The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPP's, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. The Lanterman Act requires that services and supports "shall be flexible and individually tailored to the consumer and, where appropriate, his or her family." (§ 4648, subd. (a)(2).) The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Regional centers are not required to fund every service requested by a consumer. Claimant's request for a van modification, however, is directly related to her disability and will enable her to approximate the pattern of everyday living of nondisabled persons of the same age.

5. In this appeal, van modification is a cost-effective means of meeting the needs of Claimant and her family. The Service Agency contends that Claimant's family members, in addition to public and generic resources, are available, accessible, and sufficient to meet Claimant's transportation needs. It cites section 4648, subdivision (a)(8), which prohibits regional center from using funds to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services, and section 4659, subdivision (a)(1), which requires regional centers to identify and pursue all possible sources of funding for regional center consumer's services. The Service Agency, however, has relied upon a faulty assessment of Claimant's abilities, resources, and needs.

6. Claimant's needs are great, and generic and natural supports cannot reliably meet these needs. Claimant's needs are substantially no different from those that existed when her family was providing for all of her transportation in the community. Claimant has never relied upon public transportation to access her community. Claimant's experiences with public transportation and ACCESS have demonstrated that her choice -- relying upon her family to meet her needs instead of generic resources -- is not unreasonable. Whereas Claimant could use public transportation for some needs without too much difficulty, it is clear public transportation cannot reliably meet all, or even most, of her transportation needs, particularly when accessing those services and supports essential to her medical, emotional, and social needs. And Claimant's choice builds upon her natural supports, her family.

7. Nothing in the Lanterman Act prohibits the Service Agency from funding the requested modifications. The Service Agency has cited section 4648.35, subdivision (b), which provides: “At the time of development, review, or modification of a consumer’s individual program plan (IPP) or individualized family service plan (IFSP), all of the following shall apply to a regional center: [¶] . . . [¶] (b) A regional center shall fund the least expensive transportation modality that meets the consumer’s needs, as set forth in the consumer’s IPP or IFSP.”

8. Arguably, the cost of modifying a minivan is greater than if Claimant were forced to rely upon public transportation or ACCESS to meet all her needs. This provision, however, first looks at the consumer’s needs before comparing costs. Claimant has established that, for her, generic resources are insufficient to meet all of her needs for accessing her community. Neither riding a bus nor using ACCESS will get her to Victorville, the place where she can socialize with her family and obtain respite from the stress of her daily routine. Claimant’s family can no longer transport her in an unmodified minivan. Thus, the Service Agency has failed to establish that the cost of modifying a minivan constitutes anything other than the least expensive transportation alternative.

ORDER

Claimant's appeal is sustained, and Service Agency shall fund modifications of a family-owned vehicle so that it will be accessible for Claimant.

DATED: August 7, 2013

A handwritten signature in black ink, appearing to read "Mark Harman", with a long horizontal line extending to the right.

MARK HARMAN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.